

DW 05-143

PENNICHUCK WATER WORKS, INC.

Petition for Special Contract for Water Service to the Town of Hudson

Order *Nisi* Approving Special Contract

ORDER NO. 24,611

March 31, 2006

I. BACKGROUND

On September 2, 2005, Pennichuck Water Works, Inc. (PWW), a public utility providing water service in communities in southern New Hampshire, petitioned the New Hampshire Public Utilities Commission (Commission) for authority, pursuant to RSA 378:18, to provide service to the Town of Hudson, New Hampshire (Hudson) in accordance with the terms of a Proposed Wholesale Water Supply Contract (Proposed Contract) entered into between PWW and Hudson, dated July 12, 2005. The Petition was accompanied by a copy of the executed Proposed Contract as well as a Statement of Special Circumstances pursuant to N. H. Code of Admin. Rules, Puc 1606.03(b).

The Proposed Contract supersedes a Special Water Supply Contract between PWW and Southern New Hampshire Water Company, Inc. (Original Contract) which was entered into in 1991 and approved by the Commission, on November 16, 1992, by Order No. 20,668, in combined Docket Nos. DR 91-107 and DR 91-110. Southern New Hampshire Water Company, (Southern,) assigned its rights under the Original Contract to the Town of Hudson in 1997.

In Docket Nos. 91-107 and 91-110, the Commission approved PWW's purchase of certain utility asserts and franchise rights owned by Southern in the Town of Amherst, New

Hampshire. See Order No. 20,688 (November 16, 1992). As part of the negotiated sale of the assets to PWW, PWW and Southern negotiated the Original Contract. The Original Contract obligated PWW to provide Southern with rights to take up to 3 million gallons of water a day for an initial term of 50 years. The value of the water rights in the Original Contract to be included in Southern's rate base as a valuable and useful asset was \$755,000.

The Original Contract required Southern to pay a one-time maximum fee not to exceed \$1,500,000. Under the terms of the Original Contract, Southern's initial payment of \$150,000 ($\$0.30 \times 500,000 = \$150,000$) was to be applied to the maximum fee for the first 500,000 gallons per day of capacity. The Original Contract also provided that, when Southern's usage exceeded 500,000 gallons per day for 30 consecutive days, the capacity cost per gallon would increase to \$.40 per gallon up to 1,000,000 million gallons per day, and provided further capacity cost increases as follows: \$.50 per gallon from 1,000,000 to 1,500,000 gallons per day, and \$.60 per gallon in excess of 1,500,000 million gallons per day. The Original Contract also obligated Southern to pay the volumetric rate per 100 cubic feet in the amount and manner provided for in PWW's tariff on file with the Commission and in effect for PWW's Nashua core system.

The Original Contract contemplated that the water supplied by PWW would be used primarily to assist Southern in improving the hydraulics in the southern portion of Hudson and to improve fire protection capability in an industrial area. However, unlike the early years of the Original Contract when Southern bought limited quantities of water, Hudson's usage has increased and has become more regular. In 2001, Hudson's annual consumption was 11,404 hundred cubic feet. In 2005, Hudson's annual consumption increased to 134,505 hundred cubic feet (Staff Data Requests – Set 1, Request 1-2). As a result, PWW, at the request of Hudson,

revised the terms and conditions of the Original Contract with the result that the Proposed Contract is consistent with similar bulk sale contracts that PWW has with other municipal customers.

The Proposed Contract has a term of 20 years with an automatic 5-year renewal and a 3-year notice for termination. The Proposed Contract reduces the maximum quantity of water that can be taken in a single day from 3 million gallons to 2 million gallons, and provides that in the event Hudson requests amounts in excess of 2 million gallons per day, a new price would be negotiated for the additional consumption. In lieu of the incremental capacity payments in the Original Contract, the Proposed Contract provides for an annual demand charge of \$32,800 and a non-tariff volumetric charge of \$1.116 per hundred cubic feet, which will be adjusted by the same percentage and take effect as of the same dates as any adjustment in the rates paid by residential customers in Nashua pursuant to the PWW's tariff on file with the Commission.¹ Finally, the Proposed Contract contains a provision which allows for PWW to terminate the agreement if a governmental entity acquires the assets that PWW needs to fulfill its obligation under the Proposed Contract.

In support of the Petition, PWW submitted a written statement of special circumstances, pursuant to RSA 378:18, asserting that a deviation from the tariffed rate is appropriate given that the cost of providing water on a bulk basis to Hudson at a single-metered location is lower than the cost of serving other customers, and that supplying a large quantity of water to Hudson through a single meter will generate revenues that will benefit PWW's remaining customers. PWW further stated that the charges under the contract cover all of

¹ The rates in the Proposed Contract were derived from the results of an analysis conducted by AUS Consultants on behalf of PWW to determine the costs and expenses related to the provision of service to Hudson.

PWW's variable costs to provide service and contribute to PWW's fixed costs of providing service while also providing a significant supply of water for Hudson.

On February 22, 2006, the Commission Staff (Staff) filed a letter, with PWW's responses to Staff's data requests as an attachment, recommending approval of the Proposed Contract. According to Staff, the Proposed Contract provides benefits for PWW's customers in the form of additional revenue while satisfying the needs of Hudson in conducting its operations in the town. Staff noted that the Proposed Contract, unlike the Original Contract with Southern, contains a provision which allows for PWW to terminate the agreement if a governmental entity acquires the assets that PWW needs to fulfill its obligation under the Proposed Contract.

Staff opined that, consistent with RSA 378:18, special circumstances exist to justify a departure from general rate schedules of the utility and to conclude that the special contract is in the public interest. According to Staff, the Proposed Contract will provide additional revenues that will benefit its other customers and that the rates contained therein will provide sufficient revenue to cover the cost of providing service to the Town of Hudson.

II. COMMISSION ANALYSIS

Under RSA 378:14, no public utility "shall charge or receive a greater or different compensation for any service rendered to any person, firm or corporation than the compensation fixed for such service by the schedules on file with the commission and in effect at the time such service is rendered." The Commission may deviate from this general rule and approve special contracts for services by a public utility "if special circumstances exist which render such departure from the general schedules just and consistent with the public interest. . . ." RSA 378:18. Based on our review of the Proposed Contract between PWW and the Town of Hudson, and Staff's recommendation, we find that service to Hudson constitutes a special circumstance

because of its increased level of consumption and the low level of cost associated with providing that service. We recognize PWW's need for stability in usage and revenues and believe the provisions of the Proposed Contract regarding minimum payment obligations and maximum water use address those needs.

We take administrative notice that the City of Nashua has before us, in Docket No. DW 04-048, a petition seeking valuation of PWW's assets relative to the City of Nashua's eminent domain authority under RSA 38. The Proposed Contract contains language that allows the termination of PWW's obligations to Hudson in the event of a municipal take-over of assets necessary to serve Hudson and provides, to the extent permissible, for transfer of those obligations to an acquiring governmental entity. We believe such a clause is reasonable and demonstrates that both PWW and the Town of Hudson recognize that although the term of the special contract runs through July 12, 2025, this contract may be affected by developments in DW 04-048.

For the above reasons, we find special circumstance exist which justify departure from PWW's schedules of general application. We further find that the departure described in the terms and conditions of the Proposed Contract with the Town of Hudson are just and reasonable, and consistent with the public good in accordance with RSA 378:18. In accordance with Commission Order No. 24,441, the Proposed Contract with the town of Hudson shall be identified as PWW Town of Hudson Special Contract No. 2005-2.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that pursuant to RSA 378:18, Pennichuck Water Works, Inc. Contract with the Town of Hudson dated July 12, 2005 is APPROVED; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order *Nisi* to be published once in a statewide newspaper of general circulation or of circulation in those portions of the state where operations are conducted, such publication to be no later than April 10, 2006 and to be documented in an affidavit filed with this office on or before May 1 2006; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states the reason and basis for a hearing no later than April 17, 2006 for the Commission's consideration; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than April 24, 2006; and it is

FURTHER ORDERED, that this Order *Nisi* shall be effective May 1, 2006, unless the Petitioner fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this thirty-first day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

ChristiAne G. Mason
Assistant Executive Director & Secretary